

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT
April 23, 2015

The Greenville Board of Adjustment met on the above date at 7:00 PM in the City Council Chamber of City Hall.

Scott Shook, Chairman-*

Charles Ewen *
Kevin Faison *
Justin Mullarkey *
Jim Watts *
Jeremy Spengeman X

Claye Frank X
Thomas Taft, Jr. X
Bill Johnson *
Rich Winkler *

The members present are denoted by an "*" and those absent are denoted by an "X".

VOTING MEMBERS: Shook, Ewen, Faison, Mullarkey, Johnson, Watts, Winkler

OTHERS PRESENT: Mr. Bill Little, Assistant City Attorney
Mr. Michael Dail, Planner
Mr. Tim Corley, Civil Engineer II
Ms. Amy Nunez, Secretary
Mr. Jonathan Edwards, Communications Technician

MINUTES

Mr. Johnson made a motion to approve the March 26, 2015 minutes as presented, Mr. Mullarkey seconded and the motion passed unanimously.

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY JEREMY SPENGEMAN-
WITHDRAWN**

The applicant, Jeremy Spengeman, desires a special use permit to operate a wine and craft beer shop pursuant to Appendix A, Use (10)c. of the Greenville City Code. The proposed use is located at 650 E. Fire Tower Road, Suite H. The property is further identified as being tax parcel number 42403.

Michael Overton, representative for the applicant, requested to withdraw the application. The applicant was not able to secure this location. He stated the applicant would return for a special use permit with another location.

Mr. Ewen made a motion to accept the withdrawal, Mr. Faison seconded and the motion passed unanimously.

**PUBLIC HEARING ON A REQUEST FOR SPECIAL USE PERMIT BY EILENE AND JOSEPH
SPENCER- APPROVED**

The applicants, Eilene and Joseph Spencer, desire a special use permit to operate a child day care facility pursuant to Appendix A, Use (8)a. of the Greenville City Code. The proposed use is located at 2311 S. Memorial Drive. The property is further identified as being tax parcel number 06886.

Mr. Dail delineated the area on the map. He stated that the property is located in the central portion of the City's jurisdiction. The property was previously a day care and then an auto dealer.

Zoning of Property: CDF (Downtown Commercial Fringe)

Surrounding Zoning:

North: CDF (Downtown Commercial Fringe)
South: CDF (Downtown Commercial Fringe)
East: R6S (Residential Single Family)
West: CG (General Commercial)

Surrounding Development:

North: Eilene's Child Care, Greenville Motel
South: Single Family Residences
East: Single Family Residences
West: Buyers Market Shopping Center, Auto Glass Now

Description of Property:

The subject property is 0.24 acres in size, has 100 feet of frontage along S. Memorial Drive and 105 feet of frontage along Sylvan Street and contains a 1,335 square foot commercial building. The applicant received a special use permit in September of 2000 to operate a child day care at this location. The use of the property was changed to automobile sales, which lasted longer than six months. As a result of the change in use for longer than six months, the special use permit became void.

Additionally, the applicant operates a child day care facility immediately to the north. A special use permit was issued in August of 2007 for the use.

Comprehensive Plan:

The property is located within Vision Area "G" as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends commercial development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on April 9, 2015. Notice of the public hearing was published in the Daily Reflector on April 13, 2015 and April 20, 2015.

Related Zoning Ordinance Regulations:

Definition:

Day care; child. An establishment which provides for the care and supervision of six or more children away from their homes by persons other than their family members, custodians, or guardians for periods not to exceed 18 hours within any 24-hour period.

Specific Criteria:

- (1) All accessory structures, including but not limited to playground equipment and pools must be located in the rear yard.
- (2) The minimum lot size shall be increased by a ratio of one hundred (100) square feet per child in excess of five (5).
- (3) Outdoor play area shall be provided at a ratio of one hundred (100) square feet per child and shall be enclosed by a fence at least four (4) feet in height. Further, all playground equipment shall be located in accordance with the bufferyard regulations.
- (4) If located in a residential district, a residential appearance of the site shall be maintained to the greatest possible extent.
- (5) Employee parking shall be at the rear of the structure when a child day care facility is located in a residential district.

Staff Recommended Conditions:

Day care facility must comply with all state licensing requirements and regulations prior to operation.

Other Comments:

The proposed project must meet all related NC State fire and building codes prior to occupancy.

Staff Recommendation:

Planning staff is of the opinion that the request can meet all the development standards required for issuance of a special use permit upon proper findings by the Board.

Chairman Shook asked if there were any issues with the current location.

Mr. Dail stated no.

Mr. Watts asked if there were any group homes in the area.

Mr. Dail stated he did not know.

Chairman Shook opened the public hearing.

The applicant, Eilene Spencer, spoke in favor of the request. She owns Eilene's #2 that is open and full. She was not able to rent out the proposed space after the auto dealer left. She would like to open it for afterschool care.

Mr. Mullarkey asked if she owned the property.

Ms. Spencer stated yes.

Chairman Shook asked how long has she been in the childcare business.

Ms. Spencer stated 22 years.

Mr. Mullarkey asked if she owned the adjacent property and how long has she been working there.

Ms. Spencer stated no, she rents the adjacent property and has been there about 10 years.

Mr. Mullarkey asked if she has ever had any safety issues.

Ms. Spencer stated no.

Mr. Watts asked if she checked to see if there are group homes in the area.

Ms. Spencer stated there are none.

No one spoke in opposition of the request.

Chairman asked for the Staff Recommendation.

Mr. Dail stated staff has no objection.

Chairman Shook closed the public hearing and opened for board discussion.

Mr. Watts suggested the applicant contact the police department to make sure of any group homes in the area. Group homes have recovering alcoholics, sex offenders, recovering drug addicts and they sometimes can create security issues.

Mr. Joseph Spencer, applicant, stated there are no group homes in the area.

Chairman Shook read the required findings criteria. No objections.

Mr. Mullarkey made a motion to adopt the finding of facts, Mr. Winkler seconded and the motion passed unanimously.

Mr. Ewen made a motion to approve the petition with the stated conditions, Mr. Faison seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A VARIANCE BY MIKE BALDWIN - APPROVED

The applicant, Mike Baldwin, desires a variance from the required finished floor elevation height for structures located in the 100year floodplain, found in Section 9-6-2 of the Flood Damage Prevention Ordinance in the Greenville City Code. The subject property is located at 1432 E. Fire Tower Road. The property is further identified as being tax parcel number 73311.

Attorney Little stated a variance is a 4/5th super majority vote that can only sustain 1 negative vote with a full board complement of 7. A variance is an option granted when it is no fault of their own.

Chairman Shook stated that there are 6 criteria: conditions and specifications, notice, unnecessary hardships, unique circumstances, general purpose of the Ordinance and safety and welfare.

Mr. Dail delineated the area on the map. He stated that the property is located in the southeastern portion of the City's jurisdiction along E. Fire Tower Road near the intersection of Wimbledon Drive.

Reason for Request:

The applicant seeks relief from the regulatory flood protection elevation requirements as set forth in the FLOOD DAMAGE PREVENTION ORDINANCE.

The request is to reduce the regulatory flood protection elevation from two (2) feet above the base flood elevation (BFE) to 0.85 feet above the BFE, the finish floor elevation of the existing structure located on property. This will allow the floor elevation of the proposed expansion to match the floor elevation of the existing structure.

Zoning of Property: OR (Office Residential)

Surrounding Zoning:

North: OR (Office Residential)

South: OR (Office Residential)

East: OR (Office Residential)

West: OR (Office Residential)

Surrounding Development:

North: Wasabi 88, Offices

South: Vacant, Single Family Residences

East: Vacant, Modlin Agency

West: Vacant, Regional Acceptance Corp.

Description of Property:

The subject property is 0.66 acres in size, has 105 feet of frontage along E. Fire Tower Road and contains a 3,000 square foot medical office (Family Foot & Ankle Physicians). The applicant wishes to make a 2,600 square foot expansion to their building and construct additional parking.

Comprehensive Plan:

The property is located within Vision Area “D” as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends office/institutional/multifamily development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on April 9, 2015. Notice of the public hearing was published in the Daily Reflector on April 13, 2015 and April 20, 2015.

Mr. Tim Corley, Civil Engineer, presented a staff report. He stated a variance for a flood plain area is different.

Variance Criteria:

Variances from the provisions of the Flood Damage Prevention Ordinance are heard and decided by the Board of Adjustment. The findings of facts for a variance from any provision of the Flood Damage Prevention Ordinance are different that the typical criteria used by the Board of Adjustments.

The Board must find in favor of the applicant on each criteria in order to grant the requested variance.

- (a) The variance will not make the structure in violation of other federal, state or local laws, regulations or ordinances.
- (b) The variance is the minimum necessary, considering the flood hazard, to afford relief.
- (c) Variances shall only be issued upon:
 - 1. A showing of good and sufficient cause;
 - 2. A determination that failure to grant the variance would result in exceptional hardship; and
 - 3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or chapters.

He stated the property is in the floodplain. It is recent change to the floodplain. The new maps were done and adopted in July 2014. FEMA has extended their study and now has extended the flood plain. When property was built, it was not in the floodplain.

Below are the pertinent sections of the Flood Damage Prevention Ordinance.

The Applicant is seeking relief of
SEC 9-6-2 DEFINITIONS

Regulatory flood protection elevation. The elevation to which all structures and other development located within the special flood hazard areas must be elevated or flood proofed, if nonresidential.

- (1) In “Special Flood Hazard Areas” where base flood elevations (BFEs) have been determined, this

elevation shall be at least the BFE plus two (2) feet for all structures and other development except manufactured homes.

The Administration Section on the issuance of variances

SEC. 9-6-4 Administration

(G) Variances.

(1) The Board of Adjustment as established by the City shall hear and decide requests for variances from the requirement of this chapter.

(2) Any person aggrieved by the decision of the Board of Adjustment or any taxpayer may appeal the decision to the Superior Court as provided in G.S. Chapter 7A of the North Carolina General Statutes.

(3) Variance may be issued for the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(4) In passing upon such applications for variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter and:

- a. The danger that materials may be swept onto other lands to the injury of others;
- b. The danger to life and property due to flooding or erosion damage;
- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- d. The importance of the services provided by the proposed facility to the community;
- e. The necessity to the facility of a waterfront location, where applicable;
- f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- g. The compatibility of the proposed use with existing and anticipated development;
- h. The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area;
- i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
- j. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- k. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(5) The findings listed above shall be submitted to the Board of Adjustment, in writing, and included in the application for a variance.

(6) Upon consideration of the factors listed above, and the purposes of this chapter, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(7) Variances shall not be issued within any designated floodway or non-encroachment area if any increase in flood levels during the base flood discharge would result.

(8) Conditions for variances:

- a. Variances may not be issued when the variance will make the structure in violation of other federal, state or local laws, regulations or ordinances.

- b. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- c. Variances shall only be issued upon:
 - 1. A showing of good and sufficient cause;
 - 2. A determination that failure to grant the variance would result in exceptional hardship; and
 - 3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws and chapters.
- d. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced reference level elevation. Such notification shall be maintained with a record of all variance actions.
- e. The Local Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

Chairman Shook asked if the area where the subject property is flooded in 1999.

Mr. Corley stated he did not know.

Chairman Shook asked if the addition were built at a higher grade, would it cause drainage issues to the existing building.

Mr. Corley stated possibly, but probably not since it is high in the watershed.

Chairman Shook asked if he thought it should be in the floodplain.

Mr. Corley stated that FEMA does.

The applicant, Mike Baldwin, spoke in favor of the request. He stated he represents Stancill Properties LLC, Doctors Scott and Danielle Stancill. They purchased the property November 15, 2006 and it was not in the floodplain. Custom Building Company built their building in 2007. He stated they have a healthy business and need to expand. The property did not flood in 1999. He stated he should not be in the floodplain. It meets the variance requirements and is no fault of the applicant. Since they are podiatrists, steps are not good for their business and safe walking is mandatory. The finished floor for the existing building is .85 feet above the 100-year floodplain (or Base Flood Elevation's aka BFE's). The Flood Damage Prevention Ordinance says the finished floor elevation shall be at least two feet above BFE. He read the following letter to the City included in the Board members packet:

- a. The danger that materials may be swept onto other lands to the injury of others; RESPONSE - This will be a brick siding building. I have reviewed the plans for the construction and based on that review I see no opportunity for materials from this construction to be swept onto other lands to the injury of others.
- b. The danger to life and property due to flooding or erosion damage; RESPONSE – Unlike a personal residence the office can be closed during a “Special Flood Hazard Event” and the staff can remain at home therefore danger to life is minimized. If the water level of a 100 year storm event exceeds the base flood elevation by 0.85 feet then the flood water can penetrate the door seals and weep holes but there are many companies around town that specialize in drying out carpet and shallow water damage.

- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner; RESPONSE – I feel with the finished elevation being 0.85 feet above the BFE that the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner should not take place in a 100-year flood event.
- d. The importance of the services provided by the proposed facility to the community; RESPONSE – This podiatrist’s office has experienced a great following of existing and new clients and the importance of the services provided by the proposed facility has dictated the need to increase the office size.
- e. The necessity to the facility of a waterfront location, where applicable; RESPONSE – Non-applicable.
- f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use; RESPONSE – This property was purchased in November 2006 and the office has been built since 2007 and to explore vacating the somewhat new building to find a location that is not in a Special Flood Hazardous Area is not a prudent alternative in my opinion.
- g. The compatibility of the proposed use with existing and anticipated development; RESPONSE – The existing building as well as the addition is compatible with the existing anticipated development in the area.
- h. The relationship of the proposed use to the Comprehensive Plan and Floodplain Management Program for that area; RESPONSE – The existing building and proposed addition is in compliance with The City of Greenville Comprehensive Land Use Plan as it exists today. When the office was built it was in compliance with the Floodplain Management Program for this area but now the FEMA Flood Insurance Maps have been changed which necessitates the variance request.
- i. The safety of access to the property in times of flood for ordinary and emergency vehicles; RESPONSE – Due to the fact that the site can be accessed from 2 directions on East Fire Tower Road the safety of access for ordinary and emergency vehicles can be provided.
- j. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; RESPONSE – The expected height of a 100-year storm is 68.65’ which the finished floor elevation of the building is 0.85 feet above that elevation therefore the building should not be effected by the 100 year storm elevation. Normally in the flood zone areas similar to this velocity of floodwaters is not a concern because it rises slow and falls slow due to backwater conditions. Sediment transport should be minimal. Wave action expected at the site should be minimal if any at all.
- k. The cost of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and street and bridges; RESPONSE – The constructed building addition with an elevation of 69.50 (if approved) should not increase the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

He stated the site plan has been submitted and is pending approval based on the decision of this Board. He stated they meet and satisfy the Findings of Facts.

No one spoke in opposition of the request.

Chairman Shook asked for staff recommendation.

Mr. Corley stated staff has no objection.

Chairman Shook closed the public hearing and opened for board discussion.

Mr. Winkler stated there is a potential of setting a precedent for others.

Mr. Mullarkey stated that it is a unique situation for the existing property and others don't have the burden. The property is currently above base line elevation. There is a hardship to them as property and business owners.

Chairman Shook stated there is a possibility of runoff to another property.

Mr. Winkler stated the properties east and west are vacant.

Mr. Faison asked if other pre-existing properties could also have a variance granted.

Attorney Little stated applications would be on a case-by-case basis. This is a podiatrist office. A pizza place may not be an undue hardship.

Mr. Faison asked if they considered ramps and slopes to lessen their burden.

Mr. Baldwin stated yes but for the clients a minimum of 1.15 feet is a lot.

Chairman Shook asked if there would be a similar roofline.

Mr. Baldwin yes if approved. If not there would be aesthetic and safety issues to deal with at the higher BFE.

Chairman Shook read the required findings criteria. No objections.

Mr. Mullarkey made a motion to adopt the finding of facts with the stated conditions, Mr. Johnson seconded and the motion passed unanimously.

Mr. Faison made a motion to approve the petition with the stated conditions, Mr. Watts seconded and the motion passed unanimously.

With no further business, Mr. Johnson made a motion to adjourn, Mr. Watts seconded, and it passed unanimously. Meeting adjourned at 7:42p.m.

Respectfully Submitted

Michael R. Dail, II
Planner